

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved :15.12.2021
Date of Decision:21.12.2021

Misc. Application No.526 of 2019
And
Appeal No.431 of 2019

1. Somani Overseas Pvt. Ltd.
2. Siddhipriya Poly Fab Pvt. Ltd.
3. Sumeet Silk Processors Pvt. Ltd.
4. Sitaram Prints Pvt. Ltd.
5. Ambaji Syntex Pvt. Ltd.
504, Trividh Chamber, 5th Floor,
Opp. Fire Station, Ring Road,
Surat-395002.
6. Urmila Sunder
129, Sarjan Society,
Parle Point, Surat-395003.
7. Ganga Somani
12, Keshav Park Society,
Parle Point, Surat-395007.
8. Sumadevi Somani
37, Sangam Society,
City Light Road,
Surat-395007.
9. Sankarlal Somani
12, Keshav Park Society,
Parle Point, Surat-395003.

10. Raj Kumar Somani
37, Sangam Society,
City Light Road,
Surat-395007.

11. Bajranglal Somani
129, Sarjan Society,
Parle Point, Surat-395003.

...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051.

...Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh and Mr. Samyak Pati, Advocates i/b. Parinam Law Associates for the Appellants.

Mr. Fredun DeVitre, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated 30th September, 2019 passed by the Whole Time Member ('WTM' for short) directing the appellants to disgorge an amount of Rs.4,77,91,034 towards

wrongful gains alongwith interest at the rate of 12% per annum from 12th March, 2007 till the date of payment and further directing that the interest for the period 30th June, 2016 till the date of the impugned order dated 30th September, 2019 shall be excluded.

2. The facts leading to the filing of the present appeal is, that Securities and Exchange Board of India (hereinafter referred to as 'SEBI') carried out an investigation with regard to the price manipulation in the scrip of Sumeet Industries Ltd. (hereinafter referred to as the 'Company') for the period 1st October, 2006 to 12th March, 2007. The investigation revealed that during this period the price went up to 507.4% and that it mainly increased from 5th December, 2006 to 21st February, 2007. It was also found that several corporate announcements were made with a view to increase the price of the scrip of the Company so that the promoter and promoter group entities could reduce their holding at a profitable price. The investigation also revealed that a major counter party to the sales

made by the promoter and promoter group entities was one Mr. Puroshottam Madanlal Khandelwal (hereinafter referred to as 'PK') who used to place buy orders to enable the appellant to sell at a profitable price. The investigation led to the issuance of the show cause notice and, after considering the matter, the WTM by an order dated 21st May, 2014 found that the scheme adopted by the appellants was patently fraudulent mired with price manipulation in the scrip of the Company. The WTM accordingly directed the appellant to disgorge an amount of Rs.4,69,40,232 alongwith interest at the rate of 12% per annum with effect from 12% per annum and, further, restrained them from accessing the securities market either directly or indirectly for a period of three years.

3. Against this order, appeal no.225 and 227 of 2014 was filed which was partly allowed. This Tribunal by its order dated 30th June, 2016 upheld the findings regarding the manipulation of the price in the scrip by the appellants and further recorded that PK has

executed manipulative trades in the scrip of the Company with a view to inflate the price of the scrip of the Company with the purpose of enabling the appellants to offload the shares of the Company at inflated prices. The Tribunal further held that the profit or gains made by the appellants on account of fraudulent and manipulative trades were liable to be disgorged. The WTM further found that three price sensitive announcements that was made by the Company and its promoters was not with a view to implement the same but was made with a view to inflate the price of the scrip of the Company so that the appellants who were promoters of the Company could offload the shares of the Company at inflated price.

4. The Tribunal in its order of 30th June, 2016, however, found that the calculation of the disgorgement was not based on any relevant criteria, namely, that the acquisition price determined at Rs.4.34 per share on the basis of the closing price on 30th September, 2006, i.e., one day before the

investigation commenced from 1st October, 2006 was not based on any relevant criteria. In this regard, this Tribunal observed that if the manipulative trades commenced with the trading executed by PK, then the price prevailing on the date on which PK commenced trading could be taken as the acquisition price of the shares of the Company or the price prevailing as on 30th April, 2007 could also be considered as a relevant criteria. This Tribunal accordingly reduced the period of restraint from three years to the period partly undergone by the appellants and, further set aside the findings of the WTM with regard to the calculation of the wrongful gain and remitted the matter again to the WTM to re-determine the quantum of unlawful gains in accordance with any precise norms.

5. Based on the aforesaid directions, fresh order was passed by the WTM on 30th September, 2019 directing the appellants to disgorge an amount of Rs.4,77,91,034 alongwith interest which has been challenged in this appeal.

6. We have heard Mr. Somasekhar Sundaresan, Advocate assisted by Mr. Paras Parekh and Mr. Samyak Pati, Advocates for the appellants and Mr. Fredun DeVitre, Senior Advocate assisted by Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates for the Respondent.
7. In the impugned order, the WTM has held that the acquisition price as on 3rd October, 2006 would be considered as the purchase price while calculating the unlawful gain which acquisition price comes to Rs.4.33 which was the opening trading price on 3rd October, 2006. The WTM did not agree with the contention of the appellant that the acquisition price should be the price as on 13th December, 2006 on which date PK entered into the trade and/or the appellant started selling their shares.
8. The contention of Mr. Somasekhar, learned counsel for the appellant is, that the acquisition price of Rs.4.33 as on 3rd October, 2006 is patently erroneous. In the earlier round of litigation the acquisition price was

based on the price existing on 30th September, 2006. It was further stated that 1st and 2nd October, 2006 were holidays on which dates no trading took place and, therefore there was no difference in the acquisition price either on 30th September or 3rd October, 2006. Therefore, the criteria adopted by the WTM was wholly erroneous and against the directions issued by this Tribunal. It was contended that this Tribunal in its earlier order dated 30th June, 2016 had clearly held in para 16 that if the manipulative trades commenced with the trading executed by PK, then the price prevailing on the date on which PK commenced trading could be taken as the acquisition price of the shares of the Company. It was contended that PK started purchasing shares from 13th December, 2006 and the appellants also started selling their shares from 13th December, 2006 onwards. The prevailing price on 13th December, 2006 was Rs.13/- per share. It was, thus, urged that the acquisition price should have been Rs.13/- per share instead of Rs.4.33/- per share. It was

contended that the direction of the WTM to pay interest with effect from 12th March, 2007 was wholly illegal. It was urged that interest could only be paid when disgorged amount is determined which was finally determined by the impugned order dated 30th September, 2019. It was, thus, urged that the interest, if any, can only be payable after the expiry of the stipulated period from the date of the impugned order dated 30th September, 2019 instead from 12th March, 2007.

9. On the other hand, the learned senior counsel Mr. Fredun DeVitre submitted that the order of the WTM does not suffer from any error of law and that the WTM has complied with the directions of this Tribunal in pith and substance though at some places the order of the WTM is not happily worded.

10. Considering the submissions made by the learned counsel we find that the best method for calculating the unlawful gains is the difference between the sale price and the purchase price. In the instant case, there is no

dispute with regard to the determination of the sale price which in the instant case is Rs.18.98/- per share. The bone of contention in the instant case is with regard to the purchase price/acquisition price. The appellants have not placed any material to show their acquisition price. The WTM has determined the acquisition price taking the opening price of the shares on 3rd October, 2006 which was Rs.4.33. The reason for taking this date, that is, 3rd October, 2006 is, because the WTM found the appellants to have purchased certain amount of shares on that date. It is alleged that these shares were purchased with the purpose of jacking up the price.

11. We find that since the appellants purchased shares on 3rd October, 2006 the price per share on that date can easily be found out. From a perusal of table 3 of the impugned order we find that the appellants had purchased 1,67,950 shares valuing Rs.8,97460. As per the statement of the learned counsel for the appellant

the valuation of one share on 3rd October, 2006 works out to Rs.5.34 per share.

12. Whereas the WTM has taken the opening price of 3rd October, 2006 as the cost price, namely, Rs.4.33. Since the appellants had purchased the shares on that date at a value of Rs.5.34 per share the same should be taken into consideration as the acquisition price.

13. To that extent the order of the WTM requires modification.

14. The contention that there was a clear direction in the earlier order of the Tribunal to calculate the acquisition price from the date when PK started selling the shares is wholly misconceived. The Tribunal in paragraph 16 of its order dated 30th June, 2016 had only made an observation and not a direction.

15. The contention that no interest is payable with effect from 12th March, 2007 and that only interest, if any payable after 45 days from the date of the order dated 30th September, 2019 appears to be attractive but said contention cannot be sustained. Reliance by the

appellant on a decision of this Tribunal in *Dushyant Dalal & Anr. vs. SEBI*, appeal no.182 of 2009 dated 12th November, 2010 cannot be considered in view of the decision of the Supreme Court in the case of ***Dushyant Dalal vs. SEBI dated 14th October, 2017*** **2017 (9) SCC 660** wherein the Supreme Court has categorically held that SEBI has the powers to charge interest from the date of cause of action under the Interest Act, 1978. For facility, para 32 of the judgement of the Supreme Court is reiterated hereunder:

“32. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity. The present is a case where interest would be payable in equity for the reason that all penalties collected by SEBI would be credited to the Consolidated Fund under Section 15JA of the SEBI Act. There is no greater equity than such money being used for public purposes. Deprivation of the use of such money would, therefore, sound in equity. This being the case, it is clear that, despite the fact that Section 28-A belongs to the realm of procedural law and would ordinarily be retrospective, when it seeks

to levy interest, which belongs to the realm of substantive law, the Tribunal is correct in stating that such interest would be chargeable under Section 28-A read with Section 220(2) of the Income Tax Act only prospectively. However, since it has not taken into account the Interest Act, 1978 at all, we set aside the Tribunal's findings that no interest could be charged from the date on which penalty became due. The Civil Appeals 10410-12 of 2017 are allowed insofar as the penalty cases are concerned."

16. In view of this decision of the Supreme Court (supra) the contention of the appellant cannot be sustained. The other decisions in the matter of ***CIT Kanpur vs. JK Synthetics Ltd., Income Tax appeal no.243 of 2012 decided on 3rd September, 2015, Mohan Meakin Ltd. v. State of U.P. and Others 2016 (4) AWC 4072 and in the matter of Shailesh Jhaveri v. SEBI, appeal no.79 of 2012 decided on 4th October, 2012*** are clearly distinguishable and not applicable in the instant case.

17. For the reasons stated aforesaid the appeal is partly allowed. The WTM is directed to calculate the disgorgement amount taking the acquisition price as

Rs.5.34/- per share as on 3rd October, 2006 and the sale price at Rs.18.98/- per share. The calculation shall be made by the WTM within four weeks from today alongwith interest.

18. We find that by an interim order of this Tribunal dated 25th October, 2019 the appellant was directed to deposit a sum of Rs.2 crore which has been deposited. The said amount shall be adjusted and the balance amount so calculated and intimated to the appellant shall be deposited within four weeks thereafter. Misc. application no.526 of 2019 is disposed of accordingly.

19. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will

act on production of a digitally signed copy sent by fax
and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M.T. Joshi
Judicial Member

21.12.2021
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